GOVERNMENT OF MADRAS.

Scott. II-28—55,000—27-10-52.

Copy to Mysore

Home (1953) Department

Endorsement
D.O.
Memorandum
Lodged

No. 54963 CSIV/53

Dated 27-4-1953

FURTHER PAPERS

Department.	Number	Series.	Date.

FOR MYSORE STATE

(P) 3/(E)

Extract from file bearing C.No. 19158 Cts.IV/53.

The petition is signed by an Advocate who has not filed a vakalat. Can we take notice of such petitions?

V.H.R.
5-2-53.

Submitted. Vakalatnamas need not be filed by Advocates appearing before the Govt. on behalf of parties unless there is provision in a law or rule having the force of law requiring its presentation. There seems to be no provision in law or in any rules requiring the presentation of a vakalat in the case of petitions for preferring an appeal against acquittal. It is for Govt. to decide whether they would take any action on the petition.

For orders as to issue of the draft memo. overleaf.

J.J.R.
14-2-53

V.H.R.
14-2-53.

A.i. the points raised by me should be further examine

In revision petitions under the M.V.Act vakalats or memoranda of appearance duly stamped are filed.

If it not necessary that the petition asking for appeal against acquittal should be stamped with a court fee of Rs. 1-8-0.

V.H.R.
14-2-53.

Extract from file bearing C.No. 27926 Cts.IV/53

Questions relating to vakalat and court fee should be further examined. Why is not Court fee of Re. 1-8-0 insisted on.

V.H.R.
19-2-53

Please see the notes extracte d above. The points to be examined in this file are:

(i) whether petitions presented to Govt. by Advocates should be accompanied by a vakalatnama; and

(ii) whether petitions presented by private partie asking the Govt.to move the High Court for appeals against acquittals or revision petitions for enhancement of sentence should bear a court fee of Re. 1-8-0

Point 1 at p. 1 ante: Whether petitions presented to Govt.by Advocates should be accompanied by a vakalatnama.

A similar question was raised in 1941 by Sri A.R. Mac Ewen,the then Home Secretary. In that connection the Legal Dept.noted as follows:-

"A vakalatnama need not be filed unless there is some provision in a law or rule having the force of law requiring its presentation".

The position as explained by Legal was incorporated in O.O. No. 69, Home, dated 20-4-38 . If vakalatnamas need not be filed by Advocates presenting petitions on behalf of private parties unless there is some provision in a law or rule having the force of law requiring presentation of vakalatnamas, then it would appear that an advocate may, of his own accord present a petition to Govt.without obtaining the consent of the party or parties interested in the matter. Attention may however be invited in this connection to instruction VIII in Appendix I of the Business Rules and Sectt. Instructions which lays down that the Govt.will receive petitions only from principals and that communications running in the name of a pleader or agent will receive no attention.

Legal may advise whether in cases where Govt. receive petitions running in the name of a Pleader or Agent, a vakalatnama should not be insisted upon and if not,whether petitions from pleaders or agents not accompanied by a vakalat might be ignored.

Point 2 above: whether petitions presented by private parties requesting Govt.to file appeals against acquittals and revision petitions should bear a courtfee of Re. 1-8-0.

In O.O.No. 59, Home, dated 6-6-41, it was held that the petitions presented to Govt.under sec. 417 Cr.P.C. are liable to stamp duty under article (1)(c) of Schedule II to the Court Fees Act as the Govt., who were considered to be an executive authority within the meaning of that article, are moved to exercise the statutory power conferred on them by sec. 417 Cr.P.C. In 1949 the Advocate General express an opinion that the Govt. cannot be regarded as an executive authority within the meaning of Arts.1(c) and 10(c) of Sch.II to Court Fees Act. Thereupon O.O. No.59, Home, dated 6-6-41 was cancelled and no courtfee is at present chargeable upon petitions presented to Govt.requesting them to prefer an appeal against acquittal. No fee can be levied on such petitions The position remains the same now.

The case may be sent to Legal w.r.t. C on p.2 ante.

Legal (Opns.) may be requested to advise on C and D above.

M.B.S.
26-3-53.

Special Officer will please see this.

V.H.Rao,
27-3-51.

In the Court Fees Bill which has been referred to the High Court for remarks, provisions has been made:

(1) for the levy of a court fee of Rs. 3/-on vakalats presented to the Govt. and

(2) for the levy of a fee of Rs. 2/- on petitions to Govt. which involve the exercise of non-excise of some power conferred by some law or rule having the face of law and of eight annas in other cases.

C.S.D.
27-3.

Legal opinion will please advise on (C) & (D) on pp. 2 and 3 ante.

V.H.R.
27-3-53.

Legal (drafting-A) Department

Under sec.2(21) of the Indian Stamp Act, a "power of attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time bei being in force) empowering a specified person to act for and in the name of the person executing it. A pleader can act on behalf of his client by filing a vakalatnama instead of a power of attorney in cases falling within the scope of Article 10 of schedule II to the Court Fees Act, 1870 (Please see I.L.R.IX Madras 146 and I .L.R.IX Madras 358). The Government cannot be said to be either the Chief Controlling Revenue or Executive authority or any other authority specified in Article 10 and consequently a Pleader cannot duly represent his client in a matter before the Govt. by filling a vakalatnama. And the Govt.can insist upon a party applying in person or through a person authorised by means of a power of attorney. But the Government cannot insist on a vakalatnama being filed by a Pleader in a case before it.

As regards petitions duly presented either by pleaders or by agents accompanied by neccssary "powers of attorney" such petitions should be treated as petitions presented by the principals themslves and dealt with on merits. What is required according to instruction VIII in Appendix I to the Business Rules and Secretariat Instructions is that a petition to Government should be in the mae of the principal himself and not in the name of a pleader or agent. A petition presented by a pleader on behalf of hxx his client accompanied by a power of attorney and not by a vakalatnama should therefore be entertained by the Govt.as it is a petition duly presented to Govt. In appropriate cases, there is no objection to Government entertaining a petition presented by a pleader without a power of attorney provided an implied authority to act on behalf of his client can be inferred from the circumstances of the case.

D.on page 3 ante: The legal position is as stated by Home on page 3 ante.

xxxxx
16-4.

Home Department

Please see the Legal Dept.'s note at pp. 4-5 above. In regard to C on p.2 ante they have stated that while the Govt.can insist upon a party applying in person or through a person authorised by means of a power of attorney as defined in section 2(21) of the Indian Stamp Act, they cannot insist on a vakalatnama being filed by a pleader in a case before them and that there is no objection to entertaining a petition presented by a pleader without a power of attorney,provided an implied authority to act on behalf of his client can be inferred from the circumstances of the case. Legal have confirmed 'D' p. 3 ante.

No further action is called for. The papers may be lodged.

M.B.S.
25-4-53

V.H.R.
27-4-53.

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